
**Insurance, Financial Services &
Consumer Protection Committee**

HB 2302

Brief Description: Establishing procedures for the issuance of interpretive or policy statements by the insurance commissioner.

Sponsors: Representative Santos.

Brief Summary of Bill

- Requires the Insurance Commissioner (Commissioner) to file proposed text of a proposed interpretive or policy statement for publication in the Washington State Register.
- Allows any person to object a proposed interpretive or policy statement, within 45 days of publication, by stating that the Commissioner has exceeded his or her authority or that a rule must be adopted instead of an interpretive or policy statement.
- Requires the Commissioner to take one of the following actions after an objection: Withdraw the proposed interpretive or policy statement; adopt the proposed interpretive or policy statement by rule; or notify the Joint Administrative Rules Review Committee and request a review of the proposed interpretive or policy statement.

Hearing Date: 2/21/07

Staff: Jon Hedegard (786-7127).

Background:

The Insurance Commissioner (Commissioner) oversees the business of insurance in this state. There are specific insurance statutes to implement and enforce. There are also specific and general grants of rule-making authority to the Commissioner.

The Administrative Procedures Act (APA), chapter 34.05 RCW, provides the general structure of administrative rule-making in this state. Rule-making procedures requiring notice and comment periods are established in the APA. Agencies may issue interpretive or policy statements by

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

publishing notice of the issuance of a statement in the Washington State Register (Register). These interpretive and policy statements are advisory only.

The Joint Administrative Rules Review Committee (JARRC)

The JARRC is a legislative agency. The JARRC states the mission of the agency is to determine if:

- agency rules conform to the intent of the statute(s) they purport to implement.
- agency rules are adopted in conformance with the statutory requirements for adoption of rules; and
- agency interpretive or policy statements are being used instead of rules.

If a majority determines that the rule does not conform to legislative intent, the JARRC must notify the agency of its objections and the reasons for the objections. The agency must schedule a hearing on the objection within 30 days, then must notify the JARRC of its action within seven days after the agency hearing. If the JARRC determines the agency has failed to amend or withdraw the rule, it will prepare and file a formal objection against the rule for publication in the next Register and subsequent publication of Administrative Code.

By a majority vote, the JARRC may also recommend suspension of the rule. Within 30 days, the Governor must approve or disapprove the suspension. If approved, the suspension remains in effect until 90 days after next legislative session.

The JARRC does not review an agency rule if the objection is a matter of substantive policy, rather than one of legislative intent. Matters of substantive policy are referred to an appropriate standing committee for consideration of whether the statute involved should be amended.

The JARRC will not accept review if a rule has become the subject of a lawsuit. If a question remains after the litigation has been completed, a request for review may be submitted.

Review of policy or interpretive statements

A person may petition an agency requesting the conversion of interpretive and policy statements into rules. Upon submission, the agency shall notify the JARRC of the petition. Within 60 days after submission of a petition, the agency must:

- deny the petition in writing, stating its reasons for the denial; or
- begin rule-making under the APA.

Any person may petition the JARRC for a review of a proposed or existing policy or interpretive statement, guideline, or document that is of general applicability, or its equivalent. A petition to review a statement, guideline, or document that is of general applicability, or its equivalent, may only be filed for the purpose of requesting the committee to determine whether the statement, guideline, or document that is of general applicability, or its equivalent, is being used as a rule that has not been adopted in accordance with all provisions of law. Within 30 days of the receipt of the petition, the rules review committee shall acknowledge receipt of the petition and describe any initial action taken.

A petition for review of a policy or interpretive statement must:

- identify the specific policy or interpretive statement to be reviewed;
- identify the specific statute which the rule interprets or implements;

- state why the petitioner believes that the policy or interpretive statement meets the definition of a rule and should have been adopted as a rule under the APA; and
- identify any known judicial action regarding the policy or interpretive statement or statutes identified in the petition.

If the JARRC finds by a majority vote of its members that the agency will not replace the policy or interpretive statement with a rule, the JARRC may, within 30 days from notification by the agency of its intended action, file with the code reviser notice of its objections together with a concise statement of the reasons therefor. The JARRC must provide the notice and statement to the agency also.

If the rules review committee makes an adverse finding regarding a policy or interpretive statement, the JARRC may, by a majority vote of its members, advise the governor of its finding.

Summary of Bill:

The Commissioner must file the text of any proposed interpretive or policy statement for publication in the Register.

Any person may file a written objection rules coordinator of the office of the insurance commissioner to a proposed interpretive or policy statement within 45 days after the notice of proposed interpretive or policy statement is published stating that the Commissioner has exceeded his or her authority or that a rule must be adopted instead of an interpretive or policy statement. A person who has filed a written objection may withdraw the objection.

If a person has objected to a proposed interpretive or policy statement stating that the Commissioner has exceeded his or her authority or that a rule must be adopted instead of an interpretive or policy statement and not withdrawn the objection, the Commissioner may:

- withdraw the proposed interpretive or policy statement and file a notice of the withdrawal in the Register;
- adopt the proposed interpretive or policy statement by rule under the requirements of the APA; or
- notify the JARRC of the objection to the proposed interpretive or policy statement. The notification must be treated as a request for the JARRC to review the proposed interpretive or policy statement.

If no written objections are filed with the Commissioner within 45 days after the notice of proposed interpretive or policy statement is published, or if all objections that have been filed are withdrawn by the persons filing the objections, the Commissioner may file notice issuing the interpretive or policy statement with the Register.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.